



[7590-01-P]

## NUCLEAR REGULATORY COMMISSION

[Docket No. 52-025; NRC-2008-0252]

### Vogtle Electric Generating Plant, Unit 3; Hearing Opportunity Associated with Inspections, Tests, Analyses, and Acceptance Criteria

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of intended operation; opportunity for hearing on conformance with the acceptance criteria in the combined license; and associated orders.

**SUMMARY:** By letter dated January 13, 2020, Southern Nuclear Operating Company (SNC) informed the U.S. Nuclear Regulatory Commission (NRC) that its scheduled date for initial loading of fuel into the reactor for Vogtle Electric Generating Plant (VEGP) Unit 3 is November 23, 2020. The Atomic Energy Act of 1954, as amended (AEA), and NRC regulations provide the public with an opportunity to request a hearing regarding the licensee's conformance with the acceptance criteria in the combined license for the facility. This document announces the public's opportunity to request a hearing and includes orders imposing procedures for the hearing process.

**DATES:** A request for a hearing must be filed by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) or Safeguards Information (SGI) is necessary for contention preparation must request access by **[INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Please refer to Docket ID **NRC-2008-0252** or NRC Docket No. 52-025 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2008-0252**. Address questions about NRC dockets IDs in Regulations.gov to Jennifer Borges; telephone: 301-287-9127; e-mail: Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

The inspections, tests, analyses, and acceptance criteria (ITAAC) for this combined license, the licensee's ITAAC closure notifications, uncompleted ITAAC notifications, and ITAAC post-closure notifications; associated NRC inspection and review documents; and other supporting documents pertaining to ITAAC closure for

VEGP Unit 3 are available electronically at <https://www.nrc.gov/reactors/new-reactors/col-holder/vog3.html>.

**FOR FURTHER INFORMATION CONTACT:** Cayetano Santos, Office of Nuclear Reactor Regulation (NRR), U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-415-7270, e-mail: [Cayetano.Santos@nrc.gov](mailto:Cayetano.Santos@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

Pursuant to the AEA, and the regulations in 10 CFR part 2, "Agency Rules of Practice and Procedure," and 10 CFR part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," notice is hereby given that (1) the licensee intends to operate VEGP Unit 3; (2) the NRC is considering whether to find that the acceptance criteria in the combined license (COL) are met; and (3) interested persons have an opportunity to request a hearing regarding conformance with the acceptance criteria. This notice is accompanied by an "Order Imposing Additional Procedures for ITAAC Hearings Before a Commission Ruling on the Hearing Request" (Additional Procedures Order) and an "Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information [SUNSI] and Safeguards Information [SGI] for Contention Preparation" (SUNSI-SGI Access Order).

A. Information on SNC's Intent to Operate VEGP Unit 3 and on the Hearing Opportunity Associated with Facility Operation

SNC was issued a COL for VEGP Unit 3 on February 10, 2012. Under the provisions of Section 185b. of the AEA and NRC regulations in 10 CFR 52.97(b), ITAAC are included in a COL for the purpose of establishing a means to verify whether the facility has been constructed and will be operated in conformance with the license, the AEA, and NRC rules and regulations. The ITAAC are included as Appendix C to the

COL. Section 185b. of the AEA requires that, after issuance of the COL, the Commission shall ensure that the prescribed inspections, tests, and analyses are performed and, prior to operation of the facility, shall find that the prescribed acceptance criteria are met. This AEA requirement is also set forth in 10 CFR 52.103(g), which expressly provides that operation of the facility may not begin unless and until the NRC finds that the acceptance criteria for all ITAAC are met as required by 10 CFR 52.103(g). Once the 10 CFR 52.103(g) finding is made, the licensee may proceed to the operational phase, which includes initial fuel load.

The NRC is considering whether to make the 10 CFR 52.103(g) finding that the acceptance criteria for all ITAAC are met. Prior to making this finding, Section 189a.(1)(B)(i) of the AEA provides that the NRC shall publish in the *Federal Register* a notice of intended operation that shall provide that any person whose interest may be affected by operation of the plant may within 60 days request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license. In the licensee's notification dated January 13, 2020 (ADAMS Accession No. ML20013F991), the licensee informed the NRC that its scheduled date for initial loading of fuel into the reactor is November 23, 2020.

B. Information on SNC's Completion of ITAAC

For every ITAAC, the licensee is required by 10 CFR 52.99(c)(1) to submit to the NRC an ITAAC closure notification explaining the licensee's basis for concluding that the inspections, tests, and analyses have been performed and that the acceptance criteria are met. These ITAAC closure notifications are submitted throughout construction as ITAAC are completed. If an event occurring after the submission of an ITAAC closure notification materially alters the basis for determining that the inspections, tests, and

analyses were successfully performed or that the acceptance criteria are met, then the licensee is required by 10 CFR 52.99(c)(2) to submit an ITAAC post-closure notification documenting its successful resolution of the issue. The licensee must also notify the NRC when all ITAAC are complete as required by 10 CFR 52.99(c)(4). These notifications, together with the results of the NRC's inspection process, serve as the basis for the NRC's finding regarding whether the acceptance criteria in the COL are met.

One other required notification, the uncompleted ITAAC notification, must be submitted at least 225 days before scheduled initial fuel load and must provide sufficient information, including the specific procedures and analytical methods to be used in performing the ITAAC, to demonstrate that the uncompleted inspections, tests, and analyses will be performed and the corresponding acceptance criteria will be met. 10 CFR 52.99(c)(3). The licensee has submitted the uncompleted ITAAC notifications earlier than required, and these notifications cover all ITAAC not completed as of 315 days prior to scheduled fuel load.<sup>1</sup> These uncompleted ITAAC notifications provide information to members of the public for the purposes of requesting a hearing and submitting contentions on uncompleted ITAAC within the required time frames. In the final rule entitled "Licenses, Certifications, and Approvals for Nuclear Power Plants" (72 FR 49367; August 28, 2007), the Commission stated that it "expects that any contentions submitted by prospective parties regarding uncompleted ITAAC would focus on any inadequacies of the specific procedures and analytical methods described by the licensee" in its uncompleted ITAAC notification.

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<sup>1</sup> The licensee's cover letter for the uncompleted ITAAC notifications is available at ADAMS Accession No. ML200013F132.

Members of the public must submit hearing requests by the deadline specified in this notice, and the hearing request must address any deficiencies with respect to uncompleted ITAAC based on the information available to the petitioner, including the uncompleted ITAAC notifications required by 10 CFR 52.99(c)(3).<sup>2</sup> Members of the public may not defer the submission of hearing requests or contentions because there are ITAAC that have not yet been completed. The licensee must submit an ITAAC closure notification pursuant to 10 CFR 52.99(c)(1) after it completes these uncompleted ITAAC.

The supporting documents pertaining to ITAAC closure for VEGP Unit 3 are available electronically at <https://www.nrc.gov/reactors/new-reactors/col-holder/vog3.html>. These include the ITAAC and the licensee's ITAAC closure notifications, uncompleted ITAAC notifications, and any ITAAC post-closure notifications. The licensee has not yet submitted the 10 CFR 52.99(c)(4) "all ITAAC complete notification" required under 10 CFR 52.99(c)(4). This notification will be included at <https://www.nrc.gov/reactors/new-reactors/col-holder/vog3.html> when it is submitted. If a petitioner wishes to compare a subsequent ITAAC closure notification with an earlier uncompleted ITAAC notification on the same ITAAC, then the petitioner should first locate the ITAAC index number for that ITAAC in the ITAAC closure notification. ITAAC index numbers run from 1 to 875.<sup>3</sup> Then, the petitioner should access the ITAAC Status Report, available at <https://www.nrc.gov/reactors/new-reactors/col-holder/vog3.html>, and locate the ITAAC index number entry in the report. Each ITAAC index number entry

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<sup>2</sup> As used in this notice and in the associated orders, the term "petitioner" refers to any person who (1) is contemplating the filing of a hearing request, (2) has filed a hearing request but is not admitted as a party to this proceeding, or (3) has had a hearing request granted.

<sup>3</sup> Because ITAAC have been deleted or consolidated through license amendments, there are fewer than 875 ITAAC in the COL.

includes links to ITAAC notifications associated with that ITAAC, including the uncompleted ITAAC notifications and the ITAAC closure notifications.<sup>4</sup>

The ITAAC Status Report also includes links to NRC inspection reports and ITAAC Closure Verification Evaluation Forms generated by the NRC staff and citations to periodically issued *Federal Register* notices of the NRC staff's determinations that certain inspections, tests, and analyses have been successfully completed. The NRC staff determinations made in these documents are interim determinations that do not become final unless and until the NRC makes the 10 CFR 52.103(g) finding at the end of construction that all acceptance criteria are met. The 10 CFR 52.103(g) finding, which will be made by the Director of NRR if all the acceptance criteria are met, will be accompanied by a document providing the rationale supporting the 10 CFR 52.103(g) finding. As stated in NRR Office Instruction LIC-114 (ADAMS Accession No. ML18267A182), the staff intends to make the 10 CFR 52.103(g) finding within 17 days of the licensee submitting the "all ITAAC complete notification" if all prerequisites for this finding are met.

The ITAAC Status Report will be periodically updated to reflect the submission of additional licensee ITAAC notifications and future NRC inspection reports and review documents. In addition, to provide additional background information to members of the public, <https://www.nrc.gov/reactors/new-reactors/col-holder/vog3.html> includes other supporting documents, such as the final safety analysis report for the facility, the NRC's final safety evaluation report for the COL review, and the design control document for the AP1000 design certification, which the facility references. Although the ITAAC

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<sup>4</sup> To reduce burdens on petitioners, the NRC staff has streamlined the ITAAC Status Report by removing those ITAAC notifications that have been entirely superseded by later ITAAC notifications on the same ITAAC. These superseded ITAAC notifications are still available in ADAMS.

Status Report and <https://www.nrc.gov/reactors/new-reactors/col-holder/vog3.html> will be periodically updated to reflect new information, there may be relevant documents (including licensee ITAAC notifications) that have been submitted or created after the most recent update and are publicly available in ADAMS. To search for documents in ADAMS using the VEGP Unit 3 docket number, 52-025, one should enter the term "05200025" in the "Docket Number" field when using the web-based search (advanced search) engine in ADAMS.

The licensee has submitted a partial ITAAC closure notification; this notification addresses partial closure of individual ITAAC for which additional work remains before the ITAAC will be fully closed. Partial ITAAC closure notification(s) are indicated in the ITAAC Status Report available at <https://www.nrc.gov/reactors/new-reactors/col-holder/vog3.html>. When these ITAAC are fully closed, the licensee will submit a complete ITAAC closure notification to the NRC; this notification will be available in the ITAAC Status Report. ITAAC for which a partial ITAAC closure notification has been submitted continue to be considered uncompleted and are subject to an uncompleted ITAAC notification until they are fully completed and closed.

SNC provided numerous uncompleted ITAAC notifications earlier than required; the staff was therefore able to review these notifications, which contributed to the ITAAC closure process. The staff's review of an uncompleted ITAAC notification focuses on the ITAAC completion methodology described in the notification and is documented in an Uncompleted ITAAC Notification Checklist; these checklists are available in the ITAAC Status Report.

In accordance with 10 CFR 2.105(b)(3)(iv), the notice of intended operation must identify any conditions, limitations, or restrictions to be placed on the license in connection with the finding under 10 CFR 52.103(g), and the expiration date or



circumstances (if any) under which the conditions, limitations or restrictions will no longer apply. As of the date of this notice, the NRC staff has not identified any such conditions, limitations, or restrictions.

## **II. Hearing Requests**

Any person whose interest may be affected by this proceeding and who desires to participate as a party to this proceeding must file a hearing request with the NRC. This section sets forth the requirements for requesting a hearing on whether acceptance criteria in the combined license for VEGP Unit 3 have been or will be met. This section references the requirements for hearing requests found in 10 CFR 2.309, "Hearing requests, Petitions to Intervene, Requirements for Standing, and Contentions," with certain additional procedures included in the orders issued with this notice. Interested persons should consult 10 CFR 2.309, which is available at the NRC's PDR and electronically from the NRC Library on the NRC Web site at <https://www.nrc.gov/reading-rm.html>. All hearing requests must be filed in accordance with the filing instructions in Section III of this notice.

### **A. A Hearing Request Must Show Standing**

As required by 10 CFR 2.309(d), a hearing request shall show standing by setting forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The hearing request must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the AEA to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order that may be entered in the proceeding on the petitioner's interest. Discretionary intervention

pursuant to 10 CFR 2.309(e) does not apply to this proceeding because 10 CFR 2.309(a) requires a showing of standing and contention admissibility in an ITAAC hearing, and 10 CFR 2.309(a) does not provide a discretionary intervention exception for hearings under 10 CFR 52.103 as it provides for other proceedings.

B. A Hearing Request Must Include an Admissible Contention

A hearing request must also include the contentions that the petitioner seeks to have litigated in the hearing. The contention standards for an ITAAC hearing under 10 CFR 52.103(b), which are in some respects different from the contention standards in other NRC proceedings, are as follows.

For each contention, the petitioner must meet the following requirements from 10 CFR 2.309(f)(1)(i) through (v) and (vii):<sup>5</sup>

- Provide a specific statement of the issue of law or fact to be raised or controverted, as required by 10 CFR 2.309(f)(1)(i). The issue of law or fact to be raised must be directed at demonstrating that one or more of the acceptance criteria in the COL have not been, or will not be, met and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety;<sup>6</sup>
- Provide a brief explanation of the basis for the contention, as required by 10 CFR 2.309(f)(1)(ii);
- Demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the 10 CFR 52.103(g) finding, as required by

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<sup>5</sup> The requirements of 10 CFR 2.309(f)(1)(vi) do not apply to this proceeding.

<sup>6</sup> In accordance with 10 CFR 51.108, the Commission will not admit any contentions on environmental issues in this proceeding, and the NRC is not making any environmental finding in connection with a finding under 10 CFR 52.103(g) that the acceptance criteria are met.

10 CFR 2.309(f)(1)(iii) and (iv);

- Include a concise statement of the alleged facts or expert opinions that support the petitioner's position and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely, as required by 10 CFR 2.309(f)(1)(v); and
- Submit sufficient information showing, *prima facie*, that one or more of the acceptance criteria in the COL have not been, or will not be met, and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety, as required by 10 CFR 2.309(f)(1)(vii). This information must include the specific portion of the notification required by 10 CFR 52.99(c) that the petitioner believes is inaccurate, incorrect, and/or incomplete (i.e., fails to contain the necessary information required by § 52.99(c)).<sup>7</sup>

As provided in the Additional Procedures Order issued with this notice, any declarations of eyewitnesses or expert witnesses offered in support of contention admissibility need to be signed by the eyewitness or expert witness in accordance with 10 CFR 2.304(d). If declarations are not signed, their content will be considered, but they will not be accorded the weight of an eyewitness or an expert witness, as applicable, with respect to satisfying the *prima facie* showing required by 10 CFR 2.309(f)(1)(vii). The purpose of this provision is to ensure that a position that is purportedly supported by an expert witness or an eyewitness is actually supported by that witness.

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<sup>7</sup> Consistent with 10 CFR 2.309(f)(1)(vii), a purported incompleteness in the 10 CFR 52.99(c) notification might be the basis for a petitioner's *prima facie* showing. However, if the petitioner believes that the purported incompleteness *prevents* the petitioner from making the necessary *prima facie* showing, then the petitioner may submit a claim of incompleteness as described later in this section.

Because the licensee references the AP1000 design certification rule (10 CFR part 52, Appendix D), the provisions in this design certification rule pertaining to proceedings under 10 CFR 52.103 also apply to hearing requests and contentions submitted in this proceeding. These provisions include 10 CFR part 52, Appendix D, Sections VI, VIII.B.5.g, and VIII.C.5.

C. Claims of Incompleteness

If the petitioner identifies a specific portion of the § 52.99(c) notification as incomplete and contends that the incomplete portion prevents the petitioner from making the necessary *prima facie* showing, then 10 CFR 2.309(f)(1)(vii) requires the petitioner to explain why this deficiency prevents the petitioner from making the *prima facie* showing. Such a claim is called a “claim of incompleteness.” The process for claims of incompleteness is intended to address situations in which the licensee’s 10 CFR 52.99(c) notification is incomplete (i.e., fails to contain the necessary information required by § 52.99(c)) and this incompleteness prevents the petitioner from making the necessary *prima facie* showing with respect to one or more aspects of 10 CFR 2.309(1)(i) through (v) and (vii).<sup>8</sup> To establish a valid claim of incompleteness, the petitioner (1) must specifically identify the portion of the 10 CFR 52.99(c) notification that the petitioner asserts is incomplete, (2) must provide an adequately supported showing that the 10 CFR 52.99(c) notification fails to include information required by 10 CFR 52.99(c), and (3) must provide an adequately supported explanation of why this

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<sup>8</sup> 10 CFR 2.309(f)(1)(i) through (v) are essential elements in making the *prima facie* showing required by the AEA and NRC regulations, and it is conceivable that an incompleteness in the licensee’s 10 CFR 52.99(c) notification would prevent the petitioner from satisfying the elements in 10 CFR 2.309(f)(1)(i) through (v).

deficiency prevents the petitioner from making the necessary *prima facie* showing.<sup>9</sup> This explanation must include a demonstration that the allegedly missing information is reasonably calculated to support a *prima facie* showing.

However, the petitioner's ability to file a claim of incompleteness does not obviate the need for the petitioner to show standing and, to the extent it can based on the available information, satisfy the contention requirements. Thus, the petitioner must make all of its claims regarding the ITAAC and satisfy the contention admissibility requirements of 10 CFR 2.309(f)(1)(i) through (v) and (vii) in its hearing request to the extent possible but for the petitioner's claim of incompleteness. A claim of incompleteness does not toll a petitioner's obligation to make a timely *prima facie* showing. If the petitioner is unsure whether to file a contention or a claim of incompleteness on an ITAAC notification, the petitioner can submit both a contention and a claim of incompleteness at the same time, arguing in the alternative that if the contention is not admissible, then the claim of incompleteness is valid.

In addition, to the extent that a petitioner is able to make a *prima facie* showing with respect to one aspect of an ITAAC, it must do so even if there is a different aspect of the ITAAC for which a *prima facie* showing cannot be made because of an incompleteness in the licensee's 10 CFR 52.99(c) notification. Furthermore, because the *prima facie* showing must address two issues—conformance with the acceptance criteria and whether the operational consequences of nonconformance are contrary to reasonable assurance of adequate protection of the public health and safety—a valid claim of incompleteness must either explain why the incompleteness in the

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<sup>9</sup> For claims of incompleteness, the "incompleteness" refers to a lack of required information in a licensee's ITAAC notification, not to whether the ITAAC has yet to be completed. Thus, a valid claim of incompleteness with respect to an uncompleted ITAAC notification must identify, among other things, an insufficient description in the notification of how the licensee will successfully complete the ITAAC.

10 CFR 52.99(c) notification prevents the petitioner from making the *prima facie* showing with respect to both issues, or the petitioner must make the *prima facie* showing with respect to one issue and explain why the incompleteness in the 10 CFR 52.99(c) notification prevents the petitioner from making the *prima facie* showing with respect to the other issue.

To expedite the proceeding and prevent the unnecessary expenditure of resources that might occur from litigating claims of incompleteness that could have been resolved through negotiation, the Commission is requiring consultation between the petitioner and the licensee regarding information purportedly missing from the licensee's 10 CFR 52.99(c) ITAAC notifications. This consultation must occur in a timely fashion prior to the filing of any claim of incompleteness. Specifically, the petitioner must initiate consultation with the licensee regarding any claims of incompleteness within 21 days of the notice of intended operation for all ITAAC notifications that were publicly available (or for which a redacted version was publicly available) when the notice of intended operation was published. If the ITAAC notification (or a redacted version thereof) becomes publicly available after the notice of intended operation is published, then the petitioner must initiate consultation with the licensee regarding any claims of incompleteness on such notifications within 7 days of the notification (or a redacted version thereof) becoming available to the public, except that consultation need not be commenced earlier than 21 days after publication of the notice of intended operation. If agreement is not reached before the deadline for filing the claim of incompleteness, then the petitioner must file the claim of incompleteness by the required deadline. Further requirements regarding consultation on claims of incompleteness, including requirements related to SUNSI or SGI and to deadlines for filing contentions once access to information is granted, are in Section II.B.2 of the Additional Procedures Order

issued with this notice.

If the Commission determines that the petitioner has submitted a valid claim of incompleteness, then it will issue an order requiring the licensee to provide the additional information and setting forth a schedule for the petitioner to file a contention that meets the *prima facie* standard based on the additional information. If the petitioner files an admissible contention thereafter, and all other hearing request requirements (e.g., standing) have been met, then the hearing request will be granted.

D. Access to SUNSI or SGI

A petitioner seeking access to SUNSI or SGI in the possession of the NRC for the purposes of contention formulation shall make this request in accordance with the SUNSI-SGI Access Order issued with this notice. A petitioner who seeks access to SUNSI or SGI in the possession of the licensee through the process for consultation on claims of incompleteness shall do so in accordance with Section II.B.2 of the Additional Procedures Order issued with this notice. Petitioners are required to take advantage of these processes for seeking access to SUNSI or SGI, and their failure to do so will be taken into account by the NRC.

E. Participation by Interested States, Local Governments, and Federally-recognized Indian Tribes

A request for hearing submitted by a State, local government body, Federally-recognized Indian Tribe, or an agency thereof must comply with the provisions of 10 CFR 2.309(h)(1). The hearing request must meet the requirements for hearing requests set forth in this section, except that a State, local government body, Federally-recognized Indian Tribe, or an agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries or jurisdiction. A State, local government body, Federally-recognized Indian Tribe, or an

agency thereof may also seek to participate in a hearing in accordance with 10 CFR 2.315(c).

F. Hearing Requests from the Licensee

The licensee may file a request for hearing if it disputes an NRC staff determination that an ITAAC has not been successfully completed. If the licensee requests a hearing, it must specifically identify the ITAAC subject to this dispute and the specific issues that are being disputed.<sup>10</sup>

G. Deadlines for Hearing Requests and Answers to Hearing Requests

Hearing requests must be filed no later than 60 days from **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]**. Hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness that are filed after this date must meet the requirements for such filings that are set forth in Section II.G of the Additional Procedures Order issued with this notice. As provided by 10 CFR 2.309(i), answers to a petitioner's hearing request must be filed within 25 days of service of the hearing request, and the petitioner is not permitted to reply to these answers. For hearing requests from the licensee, the NRC staff may file an answer within 10 days of service of the hearing request, and the licensee is not permitted to reply to the NRC staff's answer.

The Commission will expeditiously rule on all hearing requests, and the milestone for this ruling is 30 days from the filing of answers. If the petitioner's hearing

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<sup>10</sup> A hearing request from the licensee need not address the standards in 10 CFR 2.309(d) or (f). In particular, the licensee's interest in the proceeding is established by the fact that its authority to operate the facility depends on its compliance with the ITAAC. Also, the *prima facie* showing requirement does not apply to a licensee hearing request because the licensee would be asserting that an ITAAC has been successfully completed rather than asserting that the acceptance criteria have not been, or will not be, met. Licensees requesting a hearing would be challenging an NRC staff determination that an ITAAC has not been successfully completed; this NRC staff determination is analogous to a *prima facie* showing that the acceptance criteria have not been met.



request is granted, the petitioner becomes a party to the contested proceeding, subject to any limitations in the order granting the hearing request. Concurrent with the granting of the hearing request, the Commission would designate the presiding officer for the hearing and issue an order specifying the hearing procedures that would apply to the proceeding. The party's participation would be governed by the applicable procedures set forth in the Commission order and may include the opportunity to present the party's legal and technical views, introduce evidence, and propose questions to be asked of witnesses. The hearing procedures will be selected from those described in the "Final Procedures for Conducting Hearings on Conformance with the Acceptance Criteria in Combined Licenses" (Final ITAAC Hearing Procedures) (81 FR 43266; July 1, 2016), and may include any additional or modified case-specific procedures that the Commission designates.<sup>11</sup>

#### H. Interim Operation

If a hearing request is granted, AEA § 189a.(1)(B)(iii) directs the Commission to determine whether to allow interim operation, which is operation of the facility for an interim period before completion of the adjudicatory hearing. Interim operation will be allowed if the NRC staff makes the 10 CFR 52.103(g) finding for all ITAAC and if the Commission determines, after considering the petitioner's *prima facie* showing and any answers thereto, that there will be reasonable assurance of adequate protection of the public health and safety during a period of interim operation. AEA §§ 185b. and

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<sup>11</sup> In accordance with 10 CFR 2.309(g), participants to this proceeding may not address the selection of hearing procedures in their initial filings. The NRC provided the public with an opportunity to comment on generic hearing procedures during the comment period on the proposed generic procedures. See Final ITAAC Hearing Procedures, 81 FR 43266; Proposed Procedures for Conducting Hearings on Whether Acceptance Criteria in Combined Licenses Are Met, 79 FR 21958 (Apr. 18, 2014) (Proposed ITAAC Hearing Procedures). This prohibition, however, does not apply to a licensee's hearing request because such hearing requests are not subject to 10 CFR 2.309 and because the generic procedures did not address the procedures for hearings requested by the licensee.

189a.(1)(B)(iii); 10 CFR 52.103(c). As provided by 10 CFR 52.103(c), the Commission will make this adequate protection determination acting as the presiding officer.

The Commission is reserving its flexibility to make the interim operation determination at a time of its discretion. Because the purpose of the interim operation provision is to prevent an ITAAC hearing from unnecessarily delaying plant operation if the hearing extends beyond scheduled fuel load, the Commission intends to make an adequate protection determination for interim operation by scheduled fuel load if the hearing is not completed by that time.

In making the adequate protection determination for interim operation, the Commission will follow the legislative intent underlying the interim operation provision. The pertinent legislative history indicates that Congress did not intend that the Commission would rule on the merits of the petitioner's *prima facie* showing when making the adequate protection determination for interim operation. Instead, Congress intended interim operation for situations in which the petitioner's *prima facie* showing relates to an asserted adequate protection issue that does not present adequate protection concerns during the interim operation period or for which mitigation measures can be taken to preclude potential adequate protection issues during the period of interim operation.<sup>12</sup>

As stated previously, the adequate protection determination for interim operation is based on the parties' initial filings, i.e., the hearing request and answers thereto. Thus, the petitioner should include in its hearing request information regarding the time period and modes of operation during which the adequate protection concern arises. Likewise, the NRC staff and the licensee should include such information in their

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<sup>12</sup> Additional background information regarding interim operation can be found in the *Federal Register* notice for the Final ITAAC Hearing Procedures (81 FR 43266).

answers to the hearing request, and the licensee should also include any proposed mitigation measures to address the adequate protection concerns raised by the petitioner. The petitioners, the NRC staff, and the licensee are reminded that, ordinarily, their initial filings will be their only opportunity to address adequate protection during interim operation.

Because the Commission's interim operation determination is a technical finding, a proponent's views regarding adequate protection during interim operation must be supported with alleged facts or expert opinion, including references to the specific sources and documents on which the proponent relies. Any expert witness or eyewitness declarations, including a statement of the qualifications and experience of the expert, must be signed in accordance with 10 CFR 2.304(d). The probative value that the NRC accords to a proponent's position on adequate protection during interim operation will depend on the level and specificity of support provided by the proponent, including the qualifications and experience of each expert providing expert opinion.

If the Commission grants a hearing request, it may order additional briefing as a matter of discretion to support a determination on whether there will be adequate protection during interim operation. Such a briefing order will be issued concurrently with the granting of the hearing request. In addition, if mitigation measures are proposed by the licensee in its answer to the hearing request, then the Commission will issue a briefing order allowing the NRC staff and the petitioners an opportunity to address adequate protection during interim operation in light of the mitigation measures proposed by the licensee in its answer.

More information on the interim operation process can be found in the Final ITAAC Hearing Procedures (81 FR 43266).

I. Limited Appearance Statements

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to 10 CFR 2.315(a). In the discretion of the presiding officer, a person making a limited appearance may make an oral or written statement of position on the issues at any session of the hearing or any prehearing conference within the limits and on the conditions fixed by the presiding officer. However, the presiding officer will not provide for oral limited appearance statements unless an oral hearing is held. In addition, a person making a limited appearance statement may not otherwise participate in the proceeding. Such limited appearance statements shall not be considered evidence in the proceeding.

### **III. Electronic Submissions (E-Filing)**

Except for an initial request for access to SUNSI or SGI made pursuant to the SUNSI-SGI Access Order, all documents filed in this proceeding, including a request for hearing, any motion or other document filed in the proceeding prior to the submission of a request for hearing, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) as modified by the procedures in the orders issued with this notice.<sup>13</sup> Participants to this proceeding must submit and serve all adjudicatory documents over the internet, or in some cases mail copies on electronic storage media by overnight mail. The user's guide for electronic adjudicatory submissions is available at <https://www.nrc.gov/site-help/e-submittals/adjudicatory-eie-submission-user-guide.pdf>. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the

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<sup>13</sup> The initial request for access to SUNSI or SGI must be made in accordance with the procedures set forth in the SUNSI-SGI Access Order that accompanies this notice.

procedures described later in this section.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should (1) obtain a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for this proceeding and (2) contact the Office of the Secretary by e-mail at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at 301-415-1677, to advise the Secretary that the participant will be submitting a request for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions should be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at <https://www.nrc.gov/site-help/e-submittals.html>.

A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding so that the filer need not serve the documents

on those participants separately. Therefore, the licensee and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Web site at <https://www.nrc.gov/site-help/e-submittals.html>, by e-mail to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by overnight mail to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemaking and Adjudications Staff, Mail Stop OWFN 16-B33, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by overnight mail upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Any person who files a motion pursuant to 10 CFR 2.323 (as modified by the Additional Procedures Order issued with this notice) must consult with counsel for the

licensee and counsel for the NRC staff. Counsel for the licensee is M. Stanford Blanton, Balch & Bingham LLP, 205-226-3417, [sblanton@balch.com](mailto:sblanton@balch.com). Counsel for the NRC staff in this proceeding is Michael Spencer, 301-287-9115, [Michael.Spencer@nrc.gov](mailto:Michael.Spencer@nrc.gov).

Documents submitted in this proceeding will appear in the NRC's electronic hearing docket, which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a hearing request will require that the petitioner include information on local residence in order to demonstrate a proximity assertion of interest in this proceeding. With respect to copyrighted works, except for limited excerpts that support the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Dated at Rockville, Maryland, this 4th day of February 2020.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**  
*Secretary of the Commission.*

## **ATTACHMENT 1: Orders Associated with the Notice of Intended Operation.**

### **Order Imposing Additional Procedures for ITAAC Hearings Before a Commission Ruling on the Hearing Request**

#### **I. BACKGROUND**

The Atomic Energy Act of 1954, as amended (AEA), grants the NRC discretion to establish appropriate procedures for conducting a hearing on whether a facility as constructed complies, or upon completion will comply, with the acceptance criteria in the combined license, provided that the NRC explains its reasoning for establishing those procedures. AEA § 189a.(1)(B)(iv). As provided by 10 CFR 2.310(j), the Commission designates on a case-specific basis the procedures for proceedings on a Commission finding under 10 CFR 52.103(c) and (g), which includes the Commission determination on a hearing request under 10 CFR 52.103(c).<sup>14</sup> This order contains the procedures that govern requests for hearings on conformance with the prescribed acceptance criteria in the combined license, as well as other filings that may be submitted before a Commission ruling on the hearing request.<sup>15</sup> The procedures in this order were approved by the Commission for use on a general basis in the “Final Procedures for Conducting Hearings on Conformance with the Acceptance Criteria in Combined Licenses” (Final ITAAC [inspections, tests, analyses, and acceptance criteria] Hearing Procedures) (81 FR 43266; July 1, 2016).

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<sup>14</sup> See Licenses, Certifications, and Approvals for Nuclear Power Plants, 72 FR 49352, 49414 (August 28, 2007) (final rule).

<sup>15</sup> This order contains only procedures governing the period prior to a ruling on the hearing request. If the Commission grants a hearing request or determines that a claim of incompleteness is valid, then the Commission will issue procedures governing the resolution of these issues concurrently with its decision on the hearing request.



The Commission developed the procedures in this order based on the NRC's rules of practice in 10 CFR Part 2, primarily Subpart C, adopting or modifying them as necessary to conform to the expedited schedule and specialized nature of hearings on ITAAC. The Commission modeled these procedures on the existing rules because they have proven effective in promoting a fair and efficient process in adjudications and there is a body of experience and precedent interpreting and applying these provisions. In addition, using the existing rules to the extent possible could make it easier for potential participants in the hearing to apply the procedures in this order if they are already familiar with the existing rules. To the extent that the Commission has substantively modified these rules, the basis for the Commission's decision is set forth in this order.<sup>16</sup> And to the extent that the Commission has adopted the rules with little or no substantive change, the Commission incorporates by reference the basis for their promulgation in 10 CFR Part 2.

Many of the modifications the Commission has made to the hearing procedures in existing regulations are to account for the requirement in the AEA that, to the maximum possible extent, decisions resolving issues raised by an ITAAC hearing request shall be rendered within 180 days of the publication of the notice of intended operation or the anticipated date for initial loading of fuel, whichever is later. AEA § 189a.(1)(B)(v). Therefore, the Commission has established a narrow time frame for hearings on ITAAC, which is reflected in reduced time limits for certain adjudicatory actions. The Commission has also made appropriate changes to the "Order Imposing

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<sup>16</sup> The procedures and schedule imposed by this order are based on a set of general procedures that the Commission approved after the consideration of public comments. See Final ITAAC Hearing Procedures, 81 FR 43266; Proposed Procedures for Conducting Hearings on Whether Acceptance Criteria in Combined Licenses Are Met, 79 FR 21958 (Apr. 18, 2014). The notice in the *Federal Register* accompanying those general procedures provides a further explanation of their bases.

Procedures for Access to Sensitive Unclassified Non-Safeguards Information [SUNSI] and Safeguards Information [SGI] for Contention Preparation” (SUNSI-SGI Access Order), which immediately follows this order. The participants are obligated to ensure that their representatives and witnesses are available during the hearing process to perform all of their hearing-related tasks on time. The competing obligations of the participants’ representatives or witnesses will not be considered good cause for any delays in the schedule.

## **II. HEARING PROCEDURES**

The procedures set forth herein and in the SUNSI-SGI Access Order issued with this notice are exclusive—in other words, no procedures other than those stated in the orders issued with the notice of intended operation apply to this proceeding, unless modified by a later Commission order. Thus, if a provision of 10 CFR Part 2 is not expressly referenced in this order, then it does not apply to this proceeding, unless modified by a later Commission order.

### **A. Briefing of Legal Issues in Filings**

In order to expedite the proceeding and ensure sound decision making by the presiding officer, participants must fully brief all relevant legal issues in their filings.

### **B. Hearing Requests and Answers to Hearing Requests**

#### *1. Requirements for Hearing Requests*

- a. Hearing requests must be filed within 60 days of the publication of the notice of intended operation. Section II.G of this order governs hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness that are filed after 60 days from the publication of the notice of intended operation.
- b. Hearing requests from petitioners must meet the requirements of 10 CFR

2.309(f)(1)(i) through (v) and 10 CFR 2.309(f)(1)(vii). The requirements of 10 CFR 2.309(f)(1)(vi) do not apply to this proceeding.

- c. The requirements of Sections VI, VIII.B.5.g and VIII.C.5 of the AP1000 design certification rule apply to this proceeding.
- d. A hearing request from a petitioner must include a demonstration that the petitioner has standing in accordance with the requirements of 10 CFR 2.309(d). Additionally, the provisions of 10 CFR 2.309(h) apply to this proceeding. However, discretionary intervention pursuant to 10 CFR 2.309(e) does not apply to this proceeding because 10 CFR 2.309(a) requires a showing of standing and contention admissibility in an ITAAC hearing, and 10 CFR 2.309(a) does not provide a discretionary intervention exception for hearings under 10 CFR 52.103 as it provides for other proceedings.
- e. Any declarations of eyewitnesses or expert witnesses offered in support of contention admissibility need to be signed by the eyewitness or expert witness in accordance with 10 CFR 2.304(d). If declarations are not signed, their content will be considered, but they will not be accorded the weight of an eyewitness or an expert witness, as applicable, with respect to satisfying the *prima facie* showing required by 10 CFR 2.309(f)(1)(vii). The purpose of this provision is to ensure that a position that is purportedly supported by an expert witness or an eyewitness is actually supported by that witness.
- f. Hearing requests from the licensee must specifically identify the ITAAC whose successful completion is being disputed by the NRC staff and identify the specific issues that are being disputed.

- 2. *Consultation on Claims of Incompleteness*: To expedite the proceeding and prevent the unnecessary expenditure of resources that might occur from litigating

claims of incompleteness that could have been resolved through negotiation, the Commission is requiring consultation between the petitioner and the licensee regarding information purportedly missing from the licensee's 10 CFR 52.99(c) ITAAC notifications. This consultation must occur prior to the filing of any claim of incompleteness and must be in accordance with the provisions set forth below.

- a. The petitioner must make a sincere effort to timely initiate and meaningfully engage in consultation with the licensee, and the licensee must make a sincere effort to listen to and respond to the petitioner. Both the petitioner and the licensee must make sincere efforts to resolve the petitioner's request and must complete consultations (and any delivery of documents) with due dispatch.
- b. The petitioner must initiate consultation with the licensee regarding any claims of incompleteness within 21 days of the notice of intended operation for all ITAAC notifications that were publicly available (or for which a redacted version was publicly available) when the notice of intended operation was published. If the ITAAC notification (or a redacted version thereof) becomes publicly available after the notice of intended operation is published, then the petitioner must initiate consultation with the licensee regarding any claims of incompleteness on such notifications within 7 days of the notification (or a redacted version thereof) becoming available to the public, except that consultation need not be commenced earlier than 21 days after publication of the notice of intended operation.
- c. Within one day of the licensee discovering that consultation on a claim of incompleteness involves SUNSI or SGI, the licensee must inform the petitioner of this fact. Within one day of the licensee discovering that

security-related SUNSI or SGI is involved, the licensee must also inform the NRC staff with a brief explanation of the situation.

- d. If consultation on a claim of incompleteness involves security-related SUNSI or SGI, then the licensee shall not provide the security-related SUNSI or SGI unless and until the NRC has determined that such access is appropriate. Also, if SGI is involved and the petitioner continues to seek access to it, then, in order to expedite the proceeding, the petitioner must complete and submit to the NRC the background check forms and fee in accordance with Sections D.(2)(a) through D.(2)(e) of the SUNSI-SGI Access Order issued with this notice. The background check forms and fee must be submitted within 5 days of notice from the licensee that SGI is involved. Petitioners are expected to have forms completed prior to this date to allow for expeditious submission of the required forms and fee. The petitioner should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC.
- e. In determining whether access to SUNSI or SGI is appropriate as part of the consultation process, the NRC staff shall employ the standards in Section F of the SUNSI-SGI Access Order with respect to likelihood of establishing standing, need for SUNSI, and need to know for SGI. For access to SGI, the NRC Office of Administration will also determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required by 10 CFR 73.22(b) for access to SGI. Before making a final adverse trustworthiness and reliability determination, the NRC Office of Administration will employ the process set forth in Section K.(2) of the SUNSI-SGI Access Order. If the NRC Office of Administration makes a final

adverse determination on trustworthiness and reliability, any request for review of this determination must be filed with the Chief Administrative Judge within 7 days of receipt of the adverse determination, any NRC staff response must be filed within 7 days of receipt of the request for review, and such requests for review shall be resolved in accordance with Section K.(4) of the SUNSI-SGI Access Order.<sup>17</sup>

- f. If access to SUNSI or SGI is granted, the presiding officer for any non-disclosure agreement or affidavit or protective order will be designated in accordance with Sections G and H of the SUNSI-SGI Access Order. The approved protective order templates announced in “Protective Order Templates for Hearings on Conformance With the Acceptance Criteria in Combined Licenses” (84 FR 3515; Feb. 12, 2019), should serve as a basis for case-specific protective orders, as appropriate. Release and storage of SGI shall be in accordance with Section I of the SUNSI-SGI Access Order.
- g. Any contention based on additional information provided to the petitioner by the licensee through consultation on claims of incompleteness shall be due within 20 days of the petitioner’s access to the additional information, unless more than 20 days remains between the petitioner’s access to the additional information and the deadline for the hearing request, in which case the contention shall be due by the later hearing request deadline.
- h. If agreement is not reached before the deadline for filing the claim of incompleteness, then the petitioner must file the claim of incompleteness by

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<sup>17</sup> If consultations are not successful because the NRC staff makes an adverse determination on the petitioner’s likelihood of establishing standing, need for SUNSI, or need to know for SGI, then the issues of standing, need for SUNSI, and need to know for SGI (as applicable) will be resolved in a ruling on the claim of incompleteness if the petitioner decides to file a claim of incompleteness.

the required deadline.

- i. If a claim of incompleteness is filed, the petitioner must include with its claim of incompleteness a certification by the attorney or representative of the petitioner that the petitioner (1) complied with the timeliness requirements for consultation and (2) made a sincere effort to meaningfully engage in consultation with the licensee on access to the purportedly missing information prior to filing the claim of incompleteness. This certification may include any additional discussion that the petitioner believes is necessary to explain the situation.
- j. A claim of incompleteness involving SUNSI or SGI must (1) specifically identify the extent to which the petitioner believes that any requested information might be SUNSI or SGI, and (2) include a showing of the need for the information (for access to SUNSI) or need to know (for access to SGI). The showing of need for SUNSI must satisfy the standard in Section D.(1)(iii) of the SUNSI-SGI Access Order, and the showing of need to know for SGI must satisfy the standard in Section D.(1)(iv) of the SUNSI-SGI Access Order. A claim of incompleteness involving SGI must also state that the required forms and fee for the background check have been submitted to the NRC in accordance with Sections D.(2)(a) through D.(2)(e) of the SUNSI-SGI Access Order.
- k. A licensee answer to a claim of incompleteness must include a certification by the licensee's attorney or representative that the licensee (1) complied with the timeliness requirements for consultation and (2) made a sincere effort to listen to and respond to the petitioner and to resolve the petitioner's request prior to the filing of the claim of incompleteness. This certification

may include any additional discussion that the licensee believes is necessary to explain the situation. An answer from the licensee must also specifically identify the extent to which the licensee believes that any requested information might be SUNSI or SGI.

- I. In determining whether a claim of incompleteness is valid, the Commission will consider all of the information available to the petitioner, including any information provided by the licensee. The Commission will also consider whether the participants have discharged their consultation obligations in good faith.

3. *Effect of Hearing Requests on Interim Operation*

- a. If the petitioner argues that the information raised in the hearing request will affect adequate protection during interim operation, then, in order for its views to be considered before the Commission makes the interim operation determination, the petitioner shall provide its views on this issue, including the time periods and modes of operation in which the adequate protection concern arises, at the same time it submits the hearing request.<sup>18</sup>
- b. Because the Commission's interim operation determination is a technical finding, a petitioner's views regarding adequate protection during interim operation must be supported with alleged facts or expert opinion, including references to the specific sources and documents on which it relies. Any expert witness or eyewitness declarations, including a statement of the qualifications and experience of the expert, must be signed in accordance

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<sup>18</sup> A claim of incompleteness does not bear on interim operation because interim operation is intended to address whether operation shall be allowed notwithstanding the petitioner's *prima facie* showing, while a claim of incompleteness is premised on the petitioner's inability to make a *prima facie* showing.



with 10 CFR 2.304(d). The probative value that the NRC accords to a petitioner's position on adequate protection during interim operation will depend on the level and specificity of support provided by the petitioner, including the qualifications and experience of each expert providing expert opinion.

4. *Answers*

- a. Answers to a petitioner's hearing request shall be filed within 25 days of service of the hearing request in accordance with 10 CFR 2.309(i)(1). An answer to a licensee's hearing request may be filed by the NRC staff within 10 days of service of the hearing request.
- b. Any answers to the proffered contention from the NRC staff and the licensee shall include their views regarding the impact of the issues raised in the hearing request on adequate protection during interim operation, including the licensee's plans, if any, to propose mitigation measures to ensure adequate protection during interim operation. NRC staff filings addressing interim operation should address any terms and conditions that should be imposed to assure adequate protection during the interim period. Because the Commission's interim operation determination is a technical finding, the NRC staff's and the licensee's views regarding adequate protection during interim operation must be supported with alleged facts or expert opinion, including references to the specific sources and documents on which they rely. Any expert witness or eyewitness declarations, including a statement of the qualifications and experience of the expert, must be signed in accordance with 10 CFR 2.304(d). The probative value that the NRC accords to the NRC staff's or the licensee's position on adequate protection during interim

operation will depend on the level and specificity of support provided, including the qualifications and experience of each expert providing expert opinion.

- c. As provided by 10 CFR 2.309(i)(2)-(3), replies to answers are not permitted.

If the Commission grants the hearing request, it may determine that additional briefing is necessary to support an adequate protection determination on interim operation. If the Commission makes determinations that additional briefing is necessary on the adequate protection determination, then it intends to issue a briefing order concurrently with the granting of the hearing request. In addition, if mitigation measures are proposed by the licensee in its answer to the hearing request, then the Commission intends to issue a briefing order allowing the NRC staff and the petitioner an opportunity to address adequate protection during interim operation in light of the mitigation measures proposed by the licensee in its answer.

#### 5. *Timing for Decision on Hearing Requests*

- a. Unless the Commission extends its time for review, the Commission will rule on a hearing request within 30 days of the filing of answers.
- b. A Commission interim operation determination need not be made in conjunction with a ruling on the hearing request.

### **C. General Motions**

To accommodate the expedited timeline for the hearing, the time period for filing and responding to motions must be shortened from the time periods set forth in 10 CFR Part 2, Subpart C. Therefore, all motions, except for motions for leave to file new or amended contentions or claims of incompleteness filed after the deadline, shall be filed

within 7 days after the occurrence or circumstance from which the motion arises, or earlier, as prescribed by the presiding officer. Answers to motions shall be filed within 7 days after service of the motion, or earlier, as prescribed by the presiding officer. Except for the filing deadlines, motions and answers shall otherwise conform to the requirements of 10 CFR 2.323(a) through (d). The provisions of 10 CFR 2.323(g) apply to this proceeding.

#### **D. Motions for Extension of Time**

1. Except as otherwise provided, the presiding officer may, for good cause shown, extend the time fixed or the period of time prescribed for an act that is required or allowed to be done at or within a specified time. A showing of good cause must be based on an event occurring before the deadline in question.
2. When determining whether the requesting participant has demonstrated good cause, the presiding officer shall take into account the factors in 10 CFR 2.334(b):
  - a. Whether the requesting participant has exercised due diligence to adhere to the schedule;
  - b. Whether the requested change is the result of unavoidable circumstances; and
  - c. Whether the other participants have agreed to the change and the overall effect of the change on the schedule of the case.
3. In furtherance of the statutory direction regarding the expeditious completion of the hearing, “good cause” is to be interpreted strictly, and a showing of

“unavoidable and extreme circumstances”<sup>19</sup> is required for any extension, no matter how minor. Because good cause will be interpreted strictly, meritorious motions will likely be based on events outside the participant’s control.

4. Motions for extension of time shall be filed as soon as possible but no later than 3 days before the deadline, with one limited exception. If the participant is unable to file an extension request by 3 days before the deadline, then the participant must (1) file its request as soon as possible thereafter, (2) demonstrate that unavoidable and extreme circumstances prevented the participant from filing its extension request by 3 days before the deadline, and (3) demonstrate that the participant filed its extension request as soon as possible thereafter.<sup>20</sup>

#### **E. Requests for Reconsideration and Motions for Clarification**

Motions for reconsideration are not allowed for decisions on the hearing request or any presiding officer decisions prior to the decision on the hearing request. Instead, reconsideration will only be allowed for a presiding officer’s initial decision after hearing and Commission decisions on appeal of a presiding officer’s initial decision.

Reconsideration is allowed in these narrow instances because these are the most important decisions in the proceeding and motions for reconsideration of these decisions do not prevent them from taking effect. Reconsideration is not permitted for other decisions because (1) reconsideration is unlikely to be necessary for other decisions, which are interlocutory in nature, (2) the resources necessary to prepare, review, and

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<sup>19</sup> This standard is taken from the Policy on Conduct of Adjudicatory Proceedings, CLI-98-12, 48 NRC 18, 21 (1998).

<sup>20</sup> Consistent with practice under 10 CFR 2.307, a motion for extension of time might be filed shortly after a deadline has passed, e.g., an unanticipated event on the filing deadline prevented the participant from filing. See Amendments to Adjudicatory Process Rules and Related Requirements, 77 FR 46562, 46571 (August 3, 2012) (final rule).

rule on requests for reconsideration would take time away from other hearing-related tasks, (3) participants who disagree with an order of the presiding officer may seek redress through the process for appeals and petitions for review, and (4) the appellate process will not cause undue delay given the expedited nature of the proceeding. Motions for clarification are allowed for these other decisions, but to prevent them from becoming de facto motions for reconsideration, motions for clarification will be limited to ambiguities in a presiding officer order. In addition, a motion for clarification must explain the basis for the perceived ambiguity and may offer possible interpretations of the purportedly ambiguous language.

#### **F. Presiding Officer Notifications**

##### *1. Notification of Relevant New Developments in the Proceeding*

- a. Given the potential for circumstances to change over the course of this unique proceeding, we remind the participants of their continuing obligation to notify the other participants, the presiding officer, and the Commission of relevant new developments in the proceeding.<sup>21</sup>

##### *2. Additional Notification Procedures for Pending Contentions*

- a. For several reasons, it is possible for the factual predicate of a proposed contention to change before a decision on its admissibility. First, NRC regulations require for uncompleted ITAAC that hearing requests be submitted on the predictive question of whether one or more of the acceptance criteria in the combined license will not be met.<sup>22</sup> When the ITAAC is later completed, this may affect the basis for the proposed

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<sup>21</sup> *USEC Inc. (American Centrifuge Plant)*, CLI-06-10, 63 NRC 451, 470 (2006).

<sup>22</sup> See 10 CFR 2.309(f)(1)(vii).

contention. Second, a licensee might choose to re-perform an inspection, test, or analysis for ITAAC maintenance or to dispute a proposed contention.<sup>23</sup> Third, events subsequent to the performance of an ITAAC might be relevant to the continued validity of the earlier ITAAC performance. To account for these possibilities, and to ensure that the presiding officer and the participants are timely notified of a change in circumstances, the NRC establishes the following additional procedures for proposed contentions that might be affected by such an event.

- b. To ensure that the presiding officer and the other participants stay fully informed of the status of challenged ITAAC as a proposed contention is being considered, any answers to the proposed contention from the NRC staff and the licensee must discuss any changes in the status of challenged ITAAC.
- c. After answers are filed, the participants must notify the presiding officer and the other participants in a timely fashion as to any changes in the status of a challenged ITAAC up to the time that the presiding officer rules on the admissibility of the contention. This would include notifying the presiding officer and the other participants of information related to re-performance of an ITAAC that might bear on the proposed contention. In addition, after answers are filed, the licensee must notify the presiding officer and the other participants of the submission of any ITAAC closure notification or ITAAC post-closure notification for a challenged ITAAC. This notice must be filed

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<sup>23</sup> The AEA provisions on combined licenses and ITAAC were added by the Energy Policy Act of 1992 (EPAct), Public Law Number 102-486. The legislative history of the EPAct suggests that re-performing the ITAAC would be a simpler way to resolve disputes involving competing eyewitness testimony. 138 Cong. Rec. S1143-44 (Feb. 6, 1992) (statement of Sen. Johnston). In addition, ITAAC re-performance might occur as part of the licensee's maintenance of the ITAAC, and might also result in an ITAAC post-closure notification.

within one day of the submission of the ITAAC closure notification or ITAAC post-closure notification to the NRC.

**G. Hearing Requests, Intervention Petitions, and Motions for Leave to File New or Amended Contentions or Claims of Incompleteness Filed After the Original Deadline**

1. *Presiding Officer:* Hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness after the original deadline must be filed with the Commission.
  - a. The Commission will rule upon all hearing requests, intervention petitions, and motions for leave to file new contentions or claims of incompleteness that are filed after the original deadline. If the Commission grants the hearing request, intervention petition, or motion for leave to file new contentions, the Commission will designate the hearing procedures and schedule for the newly admitted contentions and will determine whether there will be adequate protection during interim operation with respect to the newly admitted contentions. If the Commission determines that a new or amended claim of incompleteness demonstrates a need for additional information in accordance with 10 CFR 2.309(f)(1)(vii), the Commission will designate separate procedures for resolving the claim.
  - b. For motions for leave to file amended contentions, the Commission may rule on the amended contentions or may delegate rulings on such contentions to a licensing board or a single legal judge (assisted as appropriate by technical advisors). For amended contentions, a Commission ruling may not be necessary to lend predictability to the hearing process because the Commission will have provided guidance on the admissibility of the relevant

issues when it ruled on the original contention. If a hearing request is granted, additional procedures governing presiding officer rulings on amended contentions will be included in a Commission order issued concurrently with its decision on the hearing request.

2. *Good Cause Required, as Defined in 10 CFR 2.309(c)*

- a. Hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness that are filed by petitioners after the original deadline will not be entertained absent a determination by the Commission or the presiding officer that the petitioner has demonstrated good cause by showing that:
  - (i) The information upon which the filing is based was not previously available;
  - (ii) The information upon which the filing is based is materially different from information previously available; and
  - (iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information. To be deemed timely, hearing requests, intervention petitions, and motions for leave to file new or amended contentions filed after the original deadline must be filed within 20 days of the availability of the information upon which the filing is based. To be deemed timely, motions for leave to file new or amended claims of incompleteness under 10 CFR 2.309(f)(1)(vii) must be filed within 20 days of the date that the challenged 10 CFR 52.99(c) notification (or a redacted version thereof) becomes available to the public.

3. *Additional Requirements*

- a. Hearing requests, intervention petitions, and motions for leave to file new or



amended contentions or claims of incompleteness that are filed by petitioners after the original deadline must meet the requirements set forth in Sections II.B.1.b through II.B.1.e of this order, except that a showing of standing is not required for participants who have already addressed the standing criteria.

- b. Claims of incompleteness filed after the original deadline are subject to the requirements of Section II.B.2 of this order except that Section II.B.2.b is clarified to provide that the petitioner must initiate consultation with the licensee regarding any claims of incompleteness on such notifications within 7 days of the notification (or a redacted version thereof) becoming available to the public.
- c. Licensee hearing requests after the original deadline must be filed within 20 days of formal correspondence from the NRC staff communicating its position that a particular ITAAC has not been successfully completed. Licensee hearing requests after the original deadline must also satisfy Section II.B.1.f of this order.
- d. If a petitioner submitting a hearing request, intervention petition, or motion for leave to file new or amended contentions or claims of incompleteness after the deadline believes that some aspect of operation must be stayed until action is taken in the hearing process, then that petitioner has the burden of submitting its stay request simultaneously with the hearing request, intervention petition, or motion for leave to file new or amended contentions or claims of incompleteness. If the petitioner does not include a stay request with its pleading, the petitioner will have constructively waived its right to request a stay at a later time.

4. *Effect of Hearing Requests, Intervention Petitions, and New or Amended*

*Contentions Filed After the Original Deadline on Interim Operation*

- a. The provisions in Sections II.B.3 of this order also apply to hearing requests, intervention petitions, and motions for leave to file new or amended contentions that are filed by petitioners after the original deadline.

5. *Answers*

- a. The provisions in Sections II.B.4.a and II.B.4.b of this order also apply to answers to hearing requests, intervention petitions, and motions for leave to file new or amended contentions or claims of incompleteness filed after the original deadline, except that answers to filings from petitioners are due within 14 days of service of the hearing request, intervention petition, or motion for leave to file a new or amended contention or claim of incompleteness filed after the original deadline.
- b. Replies to answers are not permitted. If the Commission grants the hearing request, intervention petition, or motion for leave to file new or amended contentions filed after the original deadline, the Commission may determine that additional briefing is necessary to support an adequate protection determination on interim operation in accordance with Section II.B.4.c of this order.

6. *Timing for Decision on Hearing Requests, Intervention Petitions, and Motions for Leave to File New or Amended Contentions or Claims of Incompleteness Filed After the Original Deadline*

- a. Unless the Commission extends the time for its review, the Commission will rule on a hearing request, intervention petition, or motion for leave to file a new or amended contention or claim of incompleteness filed after the original deadline within 30 days of the filing of answers. If a decision on the

admissibility of an amended contention is delegated to a licensing board or a single legal judge (assisted as appropriate by technical advisors), the Commission expects the presiding officer to rule on the amended contention within 30 days of the filing of answers. Further procedures governing presiding officer rulings on amended contentions would be included in a Commission order issued concurrently with its decision on the hearing request.

- b. A Commission interim operation determination need not be made in conjunction with a ruling on a hearing request, intervention petition, or new or amended contention after the deadline.

#### **H. Reopening the Record**

- 1. The NRC's existing rule in 10 CFR 2.326 will apply to any effort to reopen the record.

#### **I. Commission Review of Presiding Officer Decisions**

- 1. Because the Commission, itself, will be ruling on the hearing request, the only possible decision before this ruling that would not be made by the Commission would be on requests for review of NRC staff determinations on access to SUNSI or SGI. Any appeals of such decisions will be governed by Section II.I.2 of this order; 10 CFR 2.311 does not apply to this proceeding.
- 2. *Interlocutory Appeals*
  - a. Participants or petitioners may appeal to the Commission a presiding officer ruling with respect to a request for access to SUNSI (including, but not limited to, proprietary, confidential commercial, and security-related information) or SGI. Because of the expedited nature of the proceeding, such an appeal shall be filed within 7 days after service of the order. The appeal shall be

initiated by the filing of a notice of appeal and accompanying supporting brief. Any participant or petitioner may file a brief in opposition within 7 days after service of the appeal. The supporting brief and any answer shall conform to the requirements of 10 CFR 2.341(c)(3). A presiding officer order denying a request for access to SUNSI or SGI may be appealed by the requestor only on the question of whether the request should have been granted in whole or in part. A presiding officer order granting a request for access to SUNSI or SGI may only be appealed on the question of whether the request should have been denied in whole or in part. However, such a question with respect to SGI may only be appealed by the NRC staff, and such a question with respect to SUNSI may be appealed only by the NRC staff or by a person whose interest independent of the proceeding would be harmed by the release of the information.

- b. The Commission does not expect appeals seeking to overturn a denial of access to SUNSI or SGI to delay any aspect of the proceeding unless the requestor can show irreparable harm.

### 3. *Certified Questions/Referred Rulings*

- a. The Commission recognizes that there may be unusual cases that merit a certified question or referred ruling from the presiding officer, notwithstanding the potential for delay. Therefore, the provisions regarding certified questions or referred rulings in 10 CFR 2.323(f) and 2.341(f)(1) apply to this proceeding. However, the proceeding is not stayed by the presiding officer's referral of a ruling or certification of a question. Where practicable, the presiding officer should first rule on the matter in question and then seek Commission input in the form of a referred ruling to minimize delays in the

proceeding during the pendency of the Commission's review.

**J. Stays of Decisions or Actions**

1. 10 CFR 2.342 and 2.1213 are applicable to this proceeding with the following exceptions:
  - a. The deadline in § 2.342 for filing either a stay application or an answer to a stay application is shortened to 7 days.
  - b. The deadline in § 2.1213(c) to file an answer supporting or opposing a stay application is shortened to 7 days.
  - c. A request to stay the effectiveness of the Commission's decision on interim operation will not be entertained. The Commission's decision on interim operation becomes final agency action once the NRC staff makes the finding under 10 CFR 52.103(g) that the acceptance criteria are met and issues an order allowing interim operation.

**K. Additional Provisions**

1. *The following provisions in 10 CFR Part 2 apply to this proceeding as written and in accordance with Commission case law, except as otherwise noted:*
  - a. 10 CFR 2.4 (Definitions): with the clarification that this proceeding is considered a "contested proceeding."
  - b. 10 CFR 2.8 (Information collection requirements: OMB approval).
  - c. 10 CFR 2.111 (Prohibition on sex discrimination).
  - d. 10 CFR 2.302 (Filing of documents): The initial request for access to SUNSI or SGI under the SUNSI-SGI Access Order will be made in accordance with the provisions of the SUNSI-SGI Access Order. For all other filings, 10 CFR 2.302 applies with the exception that subsections (b)(1) and (d)(2), which relate to first-class mail delivery, do not apply. When the presiding officer has

approved a method other than electronic filing through the E-Filing system, documents filed in this proceeding must be transmitted either by fax, e-mail, or overnight mail to ensure expedited delivery. Use of overnight mail will only be allowed if fax or e-mail is impractical. In addition, for documents that are too large for the E-Filing system but could be filed through the E-Filing system if segmented into smaller files, the filer must segment the document and file the segments separately.

- e. 10 CFR 2.303 (Docket).
- f. 10 CFR 2.304 (Formal requirements for documents; signatures; acceptance for filing).
- g. 10 CFR 2.305 (Service of documents, methods, proof): The initial request for access to SUNSI or SGI under the SUNSI-SGI Access Order will be made in accordance with the provisions of the SUNSI-SGI Access Order. For all other filings, 10 CFR 2.305 applies with the exception that when the presiding officer has approved a method other than electronic service through the E-Filing system, service must be made either by fax, e-mail, or overnight mail in order to ensure expedited delivery. Use of overnight mail will only be allowed if fax or e-mail is impractical.
- h. 10 CFR 2.306 (Computation of time): with the exception that subsections (b)(1) through (b)(4), which allow additional time for mail delivery, do not apply. Because overnight delivery will result in only minimal delay, it is not necessary to extend the time for a response.
- i. 10 CFR 2.313 (Designation of presiding officer, disqualification, unavailability, and substitution): with the exception that subsection (a) does not apply because this order governs the selection of the presiding officer.

- j. 10 CFR 2.314 (Appearance and practice before the Commission in adjudicatory proceedings): with the exception that, to expedite the proceeding, the time to appeal a disciplinary sanction under subsection (c)(3) is modified to 10 days after the issuance of the order imposing sanctions.
- k. 10 CFR 2.315 (Participation by a person not a party).
- l. 10 CFR 2.316 (Consolidation of parties).
- m. 10 CFR 2.317 (Separate hearings; consolidation of proceedings).
- n. 10 CFR 2.318 (Commencement and termination of jurisdiction of presiding officer).
- o. 10 CFR 2.319 (Power of the presiding officer): subsections (a), (c), (d), (e), (g), (h), (i), (j), (k), (l), (m), (p), (q), (r), and (s) apply in their entirety. Subsection (b) applies with the clarification that this provision will not be used for purposes of discovery since there is no discovery before a contention is admitted. Subsection (f) does not apply because depositions are not allowed in this proceeding. Subsections (n) and (o) do not apply because they concern matters arising after a contention is admitted.
- p. 10 CFR 2.320 (Default).
- q. 10 CFR 2.321 (Atomic Safety and Licensing Boards).
- r. 10 CFR 2.324 (Order of procedure).
- s. 10 CFR 2.329 (Prehearing conference).
- t. 10 CFR 2.330 (Stipulations).
- u. 10 CFR 2.331 (Oral argument before the presiding officer).
- v. 10 CFR 2.335 (Consideration of Commission rules in adjudications).
- w. 10 CFR 2.343 (Oral argument).
- x. 10 CFR 2.346 (Authority of the Secretary).

- y. 10 CFR 2.347 (Ex parte communications).
- z. 10 CFR 2.348 (Separation of functions).
- aa. 10 CFR 2.390 (Public inspections, exemptions, requests for withholding).

**Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards  
Information and Safeguards Information for Contention Preparation**

A. This order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including sensitive unclassified non-safeguards information (SUNSI) and Safeguards Information (SGI)). Requirements for access to SGI are primarily set forth in 10 CFR Parts 2 and 73. Nothing in this order is intended to conflict with the SGI regulations unless this order expressly provides otherwise.

B. Within 10 days after publication of this notice of intended operation, any potential party who believes access to SUNSI or SGI is necessary to formulate contentions may request access to SUNSI or SGI. A “potential party” is any person who intends to participate as a party by demonstrating standing and filing an admissible contention in accordance with the instructions in the notice of intended operation.

C. Requests for access to SUNSI or SGI submitted later than 10 days after the publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier. To show good cause, the potential party must demonstrate that its request for access to SUNSI or SGI has been filed by the later of (a) 10 days from the date that the existence of the SUNSI or SGI document becomes public information, or (b) 10 days from the availability of new information giving rise to the need for the SUNSI or SGI to formulate the contention.



D. (1) The requestor shall request permission to access SUNSI, SGI, or both by e-mail submitted to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, [Hearing.Docket@nrc.gov](mailto:Hearing.Docket@nrc.gov); with copies being sent to the Deputy General Counsel for Hearings and Administration, Office of the General Counsel, [RidsOgcMailCenter.Resource@nrc.gov](mailto:RidsOgcMailCenter.Resource@nrc.gov); and Michael Spencer, Counsel for the NRC staff, [Michael.Spencer@nrc.gov](mailto:Michael.Spencer@nrc.gov). If it is impractical for the requestor to e-mail its request, then the requestor must submit the letter by overnight mail on the date the request is due. The addresses for overnight mail are as follows: (a) Office of the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, Mail Stop OWFN 16-B33, 11555 Rockville Pike, Rockville, Maryland 20852; (b) Deputy General Counsel for Hearings and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Mail Stop OWFN 14-A44, 11555 Rockville Pike, Rockville, Maryland 20852; and (c) Michael Spencer, Counsel for the NRC staff, U.S. Nuclear Regulatory Commission, Mail Stop OWFN 14-A44, 11555 Rockville Pike, Rockville, Maryland 20852.<sup>24</sup> The request must include the following information:

(i) A citation to this *Federal Register* notice and a statement that the information is being requested with respect to a hearing on conformance with the acceptance criteria in the combined license for Vogtle Electric Generating Plant Unit 3;

(ii) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by a finding by the NRC that the acceptance criteria in the combined license are met;

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<sup>24</sup> While a request for hearing and other filings in this proceeding must be made through the E-Filing system in accordance with the provisions set forth in this notice, the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

(iii) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

(iv) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the SGI. The request should state that the background check forms and fees required by Section D.(2) of this order have been submitted for these individuals. In addition, the request must contain a statement that explains each individual's "need to know" the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of "need to know" as stated in 10 CFR 73.2, the statement must explain:

(A) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding;<sup>25</sup> and

(B) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

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<sup>25</sup> Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

(2) If the request is for access to SGI, certain forms and fees shall be submitted as specified by Sections D.(2)(a) through D.(2)(e) of this order to support an NRC determination on trustworthiness and reliability. To initiate the background check, Form FD-258 (fingerprint card) and Form SF-85, "Questionnaire for Non-Sensitive Positions," must be completed and submitted. The requestor should contact the NRC's Office of Administration at (301) 415-3710 to request a package containing the Form FD-258 and to obtain access to Form SF-85. To obtain access to Form SF-85, each individual for whom a background check is being requested will be asked to provide the individual's full legal name, social security number, date and place of birth, telephone number, and e-mail address.<sup>26</sup> Instructions for completing these two forms will be provided directly to the individual for whom the background check is being requested.

(a) A completed Form SF-85 shall be submitted for each individual who would have access to SGI and who did not submit this form as part of the pre-clearance process announced at 84 FR 54928. The completed Form SF-85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR Part 2, Subpart C, and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF-85 can only be submitted electronically through a secure website that is owned and operated by the investigative agency performing the background check.

(b) A completed Form FD-258 (fingerprint card), signed in original ink, shall be submitted in accordance with Section D.(2)(e) for each individual who would have access to SGI and who did not submit this form as part of the pre-clearance process announced at 84 FR 54928. The fingerprint card will be used to satisfy the requirements

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<sup>26</sup> After providing this information, the individual usually should be able to obtain access to the online Form SF-85 within two business days.

of 10 CFR Part 2, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for a Federal Bureau of Investigation identification and criminal history records check.

(c) A check or money order payable in the amount of \$340.00 to the U.S. Nuclear Regulatory Commission shall be submitted in accordance with Section D.(2)(e) for each individual for whom the request for access is being submitted and who did not pay this fee as part of the pre-clearance process announced at 84 FR 54928.

(d) If the requestor or any individual who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. This statement shall be submitted in accordance with Section D.(2)(e). While processing the request, the Office of Administration will make a final determination on whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF-85 or Form FD-258; however, all other requirements for access to SGI, including the need to know, still apply.

(e) Copies of documents and materials required by Sections D.(2)(b), (c), and (d) of this order must be sent to the following address by overnight mail:

U.S. Nuclear Regulatory Commission  
Office of Administration  
Personnel Security Branch

ATTN: SGI Background Check Materials for ITAAC Hearing

Mail Stop TWFN 07-D04M

11555 Rockville Pike

Rockville, MD 20852

These documents and materials should *not* be included with the request letter to the Office of the Secretary.

E. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

F. Based on an evaluation of the information submitted under Section D.(1), the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the requestor is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI or established a need to know the SGI requested.

G. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both Sections F.(1) and F.(2), the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a non-disclosure agreement or affidavit, or protective

order<sup>27</sup> setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI. The approved protective order templates announced at 84 FR 3515 should serve as a basis for case-specific protective orders, as appropriate. In addition, the NRC staff must also inform any person whose interest independent of the proceeding would be harmed by the release of the information.

H. For requests for access to SGI, if the NRC staff determines that the requestor has satisfied both Sections F.(1) and F.(2), the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions may include, but are not limited to, the signing of a non-disclosure agreement or affidavit, or protective order<sup>28</sup> by each individual who will be granted access to SGI. The approved protective order templates announced at 84 FR 3515 should serve as a basis for case-specific protective orders, as appropriate.

I. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information

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<sup>27</sup> Any motion for protective order or draft non-disclosure affidavit or agreement for SUNSI must be filed with the single legal judge designated to rule on the request (or the Chief Administrative Judge if a single legal judge has not yet been designated) within 10 days after a positive access determination is made. If such motion is filed with the Chief Administrative Judge, the Chief Administrative Judge will designate a single legal judge to rule on the motion.

<sup>28</sup> Any motion for protective order or draft non-disclosure affidavit or agreement for SGI must be filed with the single legal judge designated to rule on the request (or the Chief Administrative Judge if a single legal judge has not yet been designated) within 10 days after a positive access determination is made. If such a motion is filed with the Chief Administrative Judge, the Chief Administrative Judge will designate a single legal judge to rule on the motion.

protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

J. Filing of Contentions. Any contentions in this proceeding that are based upon the information received as a result of a request for SUNSI or SGI must be filed by the requestor no later than 20 days after the requestor receives access to that information. However, if more than 20 days remain between the date the petitioner receives access to the information and the deadline for filing the hearing request (as established in the notice of intended operation), the petitioner may file its SUNSI or SGI contentions by that later deadline.

K. Review of Denials of Access.

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and requisite need, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes a final adverse determination regarding the proposed recipient(s) trustworthiness and reliability for access to SGI, the Office of Administration, in accordance with 10 CFR 2.336(f)(1)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record. A recipient's challenge under 10 CFR 2.336(f)(1)(iii)(B) to the completeness and accuracy of the records relied on by the Office of Administration in making its initial adverse trustworthiness and reliability determination must be submitted within 7 days of

the recipient's receipt of the records from the Office of Administration.<sup>29</sup>

(3) The requestor may challenge the NRC staff's adverse determination with respect to access to SUNSI by filing a request for review within 5 days of receipt of that determination with the Chief Administrative Judge, who will designate a single legal judge (assisted as appropriate by technical advisors) to rule on the challenge.<sup>30</sup> The NRC staff may respond to a request for review within 5 days of service of the request.

(4) The requestor may challenge the NRC staff's adverse determination on need to know or likelihood of establishing standing with respect to access to SGI by filing a request for review with the Chief Administrative Judge within 5 days of receipt of the adverse determination, and the NRC staff may file a response within 5 days of receipt of the request for review. The requestor may challenge the NRC Office of Administration's adverse determination on trustworthiness and reliability for access to SGI by filing a request for review with the Chief Administrative Judge within 7 days of receipt of the adverse determination, and the NRC staff may file a response within 7 days of receipt of the request for review.<sup>31</sup> The Chief Administrative Judge will assign a single legal judge (assisted as appropriate by technical advisors) to rule on the challenge. If the challenge relates to an adverse determination by the NRC Office of Administration on trustworthiness and reliability for access to SGI, then consistent with 10 CFR

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<sup>29</sup> The time period for a challenge under 10 CFR 2.336(f)(1)(iii)(B) has been reduced from 10 days to 7 days in order to expedite the proceeding and to be consistent with the 7-day period given in this order for interlocutory appeals of presiding officer determinations on access to SUNSI or SGI.

<sup>30</sup> Requestors should note that appeals of NRC staff determinations and other filings must be made through the E-Filing system in accordance with the provisions set forth in this notice even though the initial SUNSI/SGI request submitted to the NRC staff under these procedures was made by other means.

<sup>31</sup> The time periods for filing requests for review (and responses thereto) under 10 CFR 2.336(f)(1)(iv) have been reduced to 7 days in order to expedite the proceeding and to be consistent with the 7-day period given in this order for interlocutory appeals (and answers thereto) of presiding officer determinations on access to SUNSI or SGI. Other than the time periods for filing, requests for review of final adverse determinations by the Office of Administration on trustworthiness and reliability (and NRC staff responses to requests for review) must comply with 10 CFR 2.336(f)(1)(iv).



2.336(f)(1)(iv), neither the single legal judge chosen to rule on the challenge nor any technical advisors supporting a ruling on the challenge can serve as the presiding officer for the ITAAC proceeding.

(5) Appeals of presiding officer decisions on access to SUNSI or SGI must be made pursuant to the provisions of the “Order Imposing Additional Procedures for ITAAC Hearings Before a Commission Ruling on the Hearing Request” (Additional Procedures Order) that was issued with this notice.

L. Review of Grants of Access. A person other than the requestor may file a request for review challenging an NRC staff determination granting access to SUNSI whose release would harm that person’s interest independent of the proceeding.<sup>32</sup> Such a request for review must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access, and the NRC staff may respond to a request for review within 5 days of receiving it. The Chief Administrative Judge will designate a single legal judge (assisted as appropriate by technical advisors) to rule on the challenge. Appeals of presiding officer decisions on access to SUNSI must be made pursuant to the provisions of the Additional Procedures Order that was issued with this notice.

M. The Commission expects that the NRC staff and the presiding officer will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the requirements in this notice. Attachment 2 to this order summarizes the target schedule for processing and resolving requests under these procedures.

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<sup>32</sup> An NRC staff determination to grant access to SGI may not be challenged.

IT IS SO ORDERED. Dated at Rockville, Maryland, this 4th day of February 2020.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**  
*Secretary of the Commission.*

**ATTACHMENT 2—Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information in this Proceeding**

<b>Day</b>	<b>Event/Activity</b>
0	Publication of <i>Federal Register</i> notice of intended operation, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in this adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination on whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any person whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing

Day	Event/Activity
	(preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff continues processing the background check (including fingerprinting for a criminal history records check), and begins information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no “need,” no “need to know,” or no likelihood of standing, the deadline for the requestor to file a request for review seeking a ruling to reverse the NRC staff’s denial of access; NRC staff files copy of access determination with the Chief Administrative Judge. If NRC staff finds “need” for SUNSI, the deadline for any person whose interest independent of the proceeding would be harmed by the release of the information to file a request for review seeking a ruling to reverse the NRC staff’s grant of access.
30	Deadline for NRC staff reply to requests for review of NRC staff determination(s).
30	(Receipt +20) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for protective order and draft non-disclosure affidavit. Deadline for applicant/licensee to file non-disclosure agreement for SUNSI.
60	Deadline for submitting a hearing request containing: (i) a

Day	Event/Activity
	demonstration of standing and (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 for answers to hearing request).
Staff SGI Determination Date + 7	Deadline for requestor to seek reversal of a final adverse NRC Office of Administration trustworthiness or reliability determination under 10 CFR 2.336(f)(1)(iv).
Staff SGI Determination Date + 10 <sup>33</sup>	If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for protective order and draft non-disclosure affidavit.
A	If access granted: Issuance of presiding officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed non-disclosure affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
Receipt of Access + 20 days	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 20 days remain between the requestor's access to the

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<sup>33</sup> The completion time for access determinations may vary based on the information revealed during the background check (including a criminal history records check), and because some portion of the background check is usually conducted by agencies other than the NRC, the processing time may vary and is difficult to predict with any certainty. However, the NRC staff will make its utmost efforts to complete all activities associated with requests for access to SGI as soon as possible.

<b>Day</b>	<b>Event/Activity</b>
	information and the deadline for filing the hearing request (as established in the notice of intended operation), the requestor may file its SUNSI or SGI contentions by that later deadline.
Contention Receipt + 14 days	(Contention receipt + 14 days) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
Filing of answers + 30	Decision on contention admissibility.

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